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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,040	01/21/2004	Brian A. Lipp	424473.00018	6990
26345	7590	03/26/2007		
GIBBONS P.C. ONE GATEWAY CENTER NEWARK, NJ 07102			EXAMINER DIXON, ANNETTE FREDRICKA	
			ART UNIT	PAPER NUMBER
			3771	

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	03/26/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 03/26/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

thibbits@gibbonslaw.com  
abriggs@gibbonslaw.com  
IPDocket@gibbonslaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/763,040	<b>Applicant(s)</b> LIPP, BRIAN A.	
	<b>Examiner</b> Annette F. Dixon	<b>Art Unit</b> 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on 26 December 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 6, 11, 14-22, 25, 28-31 and 34-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 11, 14-22, 25, 28-31 and 34-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 6/13/06, 1/21/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed January 21, 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 46. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 5, 6, 11, 14-22, 25, 28-31, 34, and 46-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Stasz (US Patent 5311875).

As to Claims 1, 19 and 34, Stasz discloses a sensor comprising a flexible substrate (12), a flexible transducer (10), first and second electrical contacts (22 and 24), protective covering (14 and 16), at least one flexible lead (32).

As to Claims 2 and 20, Stasz discloses a protective covering (14 and 16) that substantially covers the flexible transducer (10).

As to Claims 3 and 21, Stasz discloses a protective covering (14 and 16) that substantially covers the flexible transducer (10) and the first and second contacts (22 and 24).

As to Claims 5 and 22, Stasz discloses the transducer to comprise resistive ink. (Column 1, Lines 54-62).

As to Claims 8 and 25, Stasz discloses the flexible substrate to have a first and second side (18 and 20), the first and second contacts are affixed to the first side of the substrate, the third contact (36) is affixed to the second side of the substrate and is in communication with the first electrical contact (22) and the fourth contact (34) is affixed to the second side of the flexible substrate and is in communication with the second

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electrical contact (24); wherein, the first and third contacts are in communication and the second and fourth contacts are in communication.

As to Claims 11 and 28, Stasz discloses an air inlet-covering portion. (Please see Figure 3).

As to Claims 14 and 30, Stasz discloses the contacts (22 and 24) are affixed to the mounting portion (28).

As to Claims 15-16, 31, and 48, Stasz discloses the electrical value of the transducer changes in proportion to the flexure of the substrate and that the value increases as the substrate is flexed. (Please see Column 3, Lines 9-19).

As to Claim 17, Stasz discloses the flexible substrate is made of polyimide. As described in applicant's specification polyimide is a non-conductive and flexible material. (Please see Column 3, Lines 9-19).

As to Claim 18, Stasz discloses the sensor is placed in the nares of the patient and thus are positioned in the stream of moving air.

As to Claim 29, Stasz discloses a mounting portion (28)

As to Claim 46 and 47, Stasz discloses the transducer (10) is affixed to the lead (32). (Please see Figures 1 and 2).

5. Claims 35-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Ritson (US Patent 5522378).

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As to Claim 35, 40, and 45, Ritson discloses a delivery device comprising an air inlet (23), and airway (601), a sensor (600), a valve (32), an aerosolation spray means (22), mouthpiece (20), electrical power supply (60 and 61), controller (50).

As to Claim 36, 37, 41 and 42, Ritson discloses the sensor is in communication with the controller (50) by a rivet (327) (Please see Column 21, Lines 5-15).

As to Claim 38 and 43, Ritson discloses the air shield (509) is positioned proximate to the sensor to direct airflow.

As to Claim 39 and 44, Ritson discloses the sensor (600) inherently cooperates with the air inlet (23) in the detection of flow rate.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

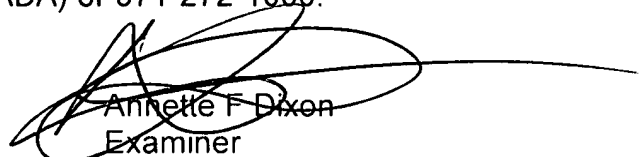
Melker (US 20040081587), Noymer (US 20040055595), Davis (US 20020092519), Van der Linden (US 5950619), Goodman (US 5813397), and Ritson (US 5394866)


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Annette F. Dixon  
Examiner  
Art Unit 3771

  
JUSTINE R. YU  
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3/16/07